

NUTTER, McCLENNEN & FISH

ONE INTERNATIONAL PLACE
BOSTON, MASSACHUSETTS 02110-2699

(617) 439-2000

TELEX 940790
TELECOPIER (617) 973-9748

HYANNIS
WASHINGTON
SAN FRANCISCO
PALO ALTO
AMSTERDAM

COUNSEL
LONDON
PARIS
TOKYO

New Bedford
11.5.91
57479

July 28, 1987

OFFICE OF REGIONAL COUNSEL

Charles C. Bering, Esq.
United States Environmental Protection Agency
Region 1, JFK Building
Boston, MA 02203

Re: United States, et al v. AVX Corporation, et al

Dear Mr. Bering:

We are writing in response to the position adopted by EPA both in recent correspondence from you and John Re to Mary Ryan and Janine Sweeney and to the position articulated in your meeting of May 20 with AVX counsel. Defendants do not concur in your characterization of the data that has been released to us recently as "a phased release of the administrative record." We do not concede that judicial review of any remedial action decision by EPA in this case is limited to the administrative record. Thus, we view the sampling and other data recently released by EPA, or which EPA has agreed to provide to us, as discovery to which we are entitled pursuant to the pending litigation, since it is indisputable that the data underlying the ongoing remedial investigation and feasibility study, the costs of which are part of the subject matter of the litigation, are relevant not only to the cost recovery action, but also to the natural resource cases pending against four out of the five defendants in this matter. Please be advised that by virtue of our inspection and copying of the material produced, defendants do not waive their rights to seek additional information through formal discovery. In particular, AVX does not consider the May 20 meeting as a discovery conference conforming to Local Rule 16(d) and no action by AVX to inspect and copy data should be viewed as a binding discovery compromise.

Since EPA and government counsel take the position that the data released does comprise an administrative record, please advise us what procedure, if any, you expect the defendants or any other PRP to follow in order to preserve our rights. Furthermore, whether the data that has recently been produced is viewed as part of the administrative record or as trial discovery, defendants are severely disadvantaged by the piecemeal production of currently available information, particularly as it pertains to such critical and time-sensitive

NUTTER, McCLENNEN & FISH

Charles Bering, Esq.
July 28, 1987
Page 2

subjects as the pilot dredging study. Please tell us what "units" you intend to produce as part of the phased release of the administrative record and when. We also request you to advise us exactly what data is not being produced. This applies not only to material which is being withheld under a claim of deliberative process, but also to material whose release is delayed for any reason.

Finally, we note that the use of E.C. Jordan's Portland office as the repository of the administrative record appears illogical. The proffered reason, in addition to E.C. Jordan's current use of a very limited amount of the material housed in Portland, is that no other space exists. This is not an adequate reason to choose a storage location which makes access to the so-called administrative record difficult. This burden is particularly onerous if any members of the public choose to exercise their rights to review the "administrative record". In addition, as Ms. Ryan and Ms. Ritts pointed out to John Re during their visit on June 30, documents located in the basement at E.C. Jordan were within a few feet of standing water. Appropriate measures should be taken to guarantee the integrity of these documents.

We look forward to your early reply.

Very truly yours,

Paul B. Galvani, Esq.
Paul B. Galvani
Ropes & Gray
225 Franklin Street
Boston, MA 02110
for: Aerovox Incorporated

Mary K. Ryan
Daniel J. Gleason
Mary K. Ryan
Nutter, McClennen & Fish
One International Place
Boston, MA 02110-2699
for: AVX Corporation

John Quarles, mkr
John Quarles
Janine Sweeney
Morgan, Lewis & Bockius
1800 M Street, N.W.
Washington, D.C. 20036
for: Federal Pacific Electric Co.

David A. McLaughlin, mkr
David A. McLaughlin, Esq.
McLaughlin & Folan
448 County Street
New Bedford, MA 02740
for: Belleville Industries, Inc.

Verne Vance, mkr
Verne W. Vance, Jr.
Foley, Hoag & Eliot
One Post Office Square
Boston, MA 02109
For: Cornell-Dubilier Electronics, Inc.